

**STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE**

FRANK COTTON,

Plaintiff,

-vs-

**AMENDED
COMPLAINT**

Index No.: 97/8292

**REV. EUGENE G. EMO; NEW YORK
STATE ASSOCIATION FOR RETARDED
CITIZENS, INC. a/k/a NYSARC, INC.;
STEUBEN COUNTY ASSOCIATION
FOR RETARDED CITIZENS a/k/a
STEUBEN ARC, Individually, and as a
Division of NEW YORK STATE
ASSOCIATION FOR RETARDED
CITIZENS, INC. a/k/a NYSARC, INC.;
THE ROCHESTER CATHOLIC DIOCESE,
and ROBERT MCCOLLUM and MARY LOU
MCCOLLUM,**

Defendants.

Plaintiff, Frank Cotton, by and through his attorneys, Culley, Marks, Tanenbaum, Capell & Pezzulo, complain of the defendants and allege as follows:

1. Plaintiff, Frank Cotton, was at all times relevant to this action and still is a resident of the County of Steuben, State of New York.
2. Upon information and belief defendant Rev. Eugene G. Emo (hereinafter referred to as "Emo") was at all times relevant to this action and still is a resident of the County of Monroe, State of New York.
3. Upon information and belief, defendant New York State Association for Retarded Citizens Corporation a/k/a NYSARC, Inc. (hereinafter referred to as "NYSARC"), is a tax exempt, not-for-profit corporation organized and existing under and by virtue of the

laws of the State of New York with its principal place of business located at 393 Delaware Avenue, Delmar, New York 12054 in the County of Albany.

4. Upon information and belief, defendant Steuben County Association for Retarded Citizens a/k/a Steuben ARC (hereinafter referred to as "Steuben ARC") is a not-for-profit, tax exempt division of NYSARC, which is organized and existing under and by virtue of the laws of the State of New York, having its principal place of business located at 6838 Industrial Park Road, Bath, New York, 14810.

5. Upon information and belief, Roman Rochester Catholic Diocese (hereinafter referred to as "Diocese"), is a religious corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office at 1150 Buffalo Road, Rochester, New York, 14624 in the County of Monroe.

6. Upon information and belief, at all times hereinafter mentioned defendant Emo was and is a Roman Catholic priest trained and supervised under the auspices of the Roman Rochester Catholic Diocese.

7. Upon information and belief, at all times hereinafter mentioned, defendants Robert McCollum and Mary Lou McCollum owned and operated a residential family type home for adults located at 23 East Main Street, Canesteo, New York.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST REV. EUGENE EMO
(Negligent Infliction of Emotional Harm)**

8. Plaintiff repeats and realleges each and every allegation as set forth in paragraphs "1" through "7" of this complaint, as though fully set forth herein.

9. From about 1981 up to and including January 26 and 27, 1996, and prior and

subsequent thereto, plaintiff, Frank Cotton, came under the guidance, instruction, and care of defendant while plaintiff was a resident of the Steuben County Association for Retarded Citizens.

10. The defendant undertook in the guidance, education, instruction and care of plaintiff, Frank Cotton, the duty and obligation to do so according to the standards of care generally accepted in the community and to use reasonable care, skill, and sound judgment in the guidance, education, instruction, and care of plaintiff Frank Cotton.

11. The defendant was negligent in that he negligently and carelessly failed to guide educate, instruct and care for plaintiff Frank Cotton in a careful and skillful manner; that defendant negligently and carelessly, on more than one occasion, was involved in sexual relations and sodomy with plaintiff Frank Cotton.

12. That as a result of the defendant's negligence, plaintiff suffered personal injuries, extreme mental anguish and emotional upset.

13. As a result plaintiff was damaged in the sum of \$500,000.00.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT EMO
(Battery & Sodomy)**

14. Plaintiff repeats and realleges each and every allegation as set forth in paragraphs "1" through "13" of this complaint as if fully set forth herein.

15. The defendant assaulted and sodomized plaintiff, Frank Cotton while he was under defendant's guidance, instruction, and care.

16. The assault, sodomy and resulting injuries occurred because of the intentional, willful, reckless and malicious conduct of defendant, Emo.

17. As a result of the foregoing, the conduct of the defendant had unintended consequences as to the plaintiff, Frank Cotton in that he suffered personal injuries, mental anguish and emotional upset.

18. As a result plaintiff, Frank Cotton was damaged in the sum of \$750,000.00.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT EMO
(Intentional Infliction of Emotional Harm)**

19. Plaintiff reasserts and realleges each and every allegation contained in paragraphs "1" through "18" of this Complaint as if fully set forth herein.

20. Upon information and belief, the defendant herein willfully, maliciously and intentionally inflicted serious mental and emotional distress on the plaintiff Frank Cotton.

21. Such willful, malicious and intentional infliction of serious mental and emotional distress is and was committed by the defendants without excuse or justification.

22. As a result of defendants' actions, the intended consequences were to cause the plaintiff Frank Cotton personal injuries, extreme mental anguish and emotional upset.

23. As a result, plaintiff was damaged in the sum of \$750,000.00.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT
ROCHESTER CATHOLIC DIOCESE.
(Negligent Hiring and Supervision)**

24. Plaintiff reasserts and realleges each and every allegation contained in paragraphs "1" through "23" of this Complaint as if fully set forth herein.

25. Upon information and belief, defendant Emo was and is in the employ of defendant, The Rochester Catholic Diocese.

26. Defendant, Emo, on various occasions prior to, and up to and including,

January 1996, negligently and carelessly caused plaintiff, Frank Cotton, to be sodomized by him.

27. The foregoing occurred while defendant Emo was in the employ of defendant The Rochester Catholic Diocese.

28. The foregoing occurred as a result of the negligence and carelessness of the defendant, The Rochester Catholic Diocese, in failing to properly supervise; in negligently hiring and training Emo; in failing to give proper instruction and maintain control over personnel within its employ, specifically defendant Emo, when defendants knew or should have known of their employee's propensity to conduct himself in a manner harmful to the plaintiff, Frank Cotton.

29. That as a result of the foregoing, plaintiff suffered personal injuries, mental anguish and emotional upset.

30. As a result, plaintiff was damaged in the sum of \$750,000.00.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS
NYSARC and STEUBEN ARC.
(Negligent Supervision)**

31. Plaintiff reasserts and realleges each and every allegation contained in paragraphs "1" through "30" of this Complaint as if fully set forth herein.

32. That in January, 1996 and prior thereto, plaintiff Frank Cotton was a resident of the facilities owned and operated by, and/or was receiving vocational and other related services from, defendant Steuben ARC, a division of NYSARC (hereinafter referred to as "ARC"), as plaintiff is and was a mentally handicapped individual in need of these services offered by defendant ARC.

33. As such, plaintiff came under the guidance, education, instruction, care and supervision of defendant ARC, their agents, servants and/or employees.

34. The defendant ARC undertook in the guidance, education, instruction, supervision, and care of plaintiff Frank Cotton, the duty and obligation to do so according to the standards of care generally accepted in the community and to use reasonable care, skill and sound judgment in the guidance, education, instruction, care and supervision of plaintiff Frank Cotton.

35. Defendant ARC, its agents, servants and/or employees were negligent in that they negligently and carelessly failed to guide, educate, instruct, care for and supervise plaintiff Frank Cotton in a careful and skillful manner.

36. As a result of defendant ARC's negligence, plaintiff has suffered personal injuries, extreme mental anguish and emotional upset.

37. As a result plaintiff was damaged in the sum of \$750,000.00.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS
ROBERT MCCOLLUM and MARY LOU MCCOLLUM.
(Negligent Supervision)**

38. Plaintiff reasserts and realleges each and every allegation contained in paragraphs "1" through "37" of this Complaint as if fully set forth herein.

39. That in January, 1996 and prior thereto, plaintiff Frank Cotton is and was a mentally handicapped individual in need of the services offered by Robert McCollum and Mary Lou McCollum.

40. Upon information and belief, from about 1981, up to and including January 26, 1996, and prior and subsequent thereto, Frank Cotton was a resident of a residential family type

home for adults located at 23 East Main Street, Canesteeo, New York.

41. As such, plaintiff came under the guidance, education, instruction, care and supervision of defendants Robert McCollum and Mary Lou McCollum, their agents, servants and/or employees.

42. The defendants Robert McCollum and Mary Lou McCollum, their agents, servants and/or employees undertook in the guidance, education, instruction, supervision, and care of plaintiff Frank Cotton, the duty and obligation to do so according to the standards of care generally accepted in the community and to use reasonable care, skill and sound judgment in the guidance, education, instruction, care and supervision of plaintiff Frank Cotton.

43. Defendants Robert McCollum and Mary Lou McCollum, their agents, servants and/or employees were negligent in that they negligently and carelessly failed to guide, educate, instruct, care for and supervise plaintiff Frank Cotton in a careful and skillful manner.

44. As a result of defendants Robert McCollum and Mary Lou McCollum, their agents, servants and/or employees negligence, plaintiff has suffered personal injuries, extreme mental anguish and emotional upset.

45. As a result plaintiff was damaged in the sum of \$750,000.00.

WHEREFORE, Plaintiff demands judgment against the defendants as follows:

- a. On the first cause of action against defendant Emo, in an amount to be determined at trial, but in no event less than Five Hundred Thousand Dollars (\$500,000.00);
- b. On the second cause of action against defendant Emo, in an amount to be determined at trial, but in no event less than Seven Hundred and Fifty Dollars (\$750,000.00);

- c. On the third cause of action against defendant Emo, in an amount to be determined at trial, but in no event less than Seven Hundred and Fifty Dollars (\$750,000.00);
- d. On the fourth cause of action against defendant The Rochester Catholic Diocese, in an amount to be determined at trial, but in no event less than Seven Hundred and Fifty Dollars (\$750,000.00);
- e. On the fifth cause of action against defendants NYSARC and Steuben ARC, in an amount to be determined at trial, but in no event less than Seven Hundred and Fifty Dollars (\$750,000.00);
- f. On the Sixth cause of action against defendants Robert McCollum and Mary Lou McCollum, in an amount to be determined at trial, but in no event less than Seven Hundred and Fifty Dollars (\$750,000.00);
- g. The costs and disbursements incurred by Plaintiff in pursuing the within action; and
- h. Any other, further, and different relief that this Court deems just and proper.

DATED: November 11, 1997
Rochester, New York

**CULLEY, MARKS, TANENBAUM,
CAPELL & PEZZULO**
Glenn E. Pezzulo, Of Counsel
Attorneys for Plaintiff
36 West Main Street, Suite 500
Rochester, New York 14614-1790
Telephone: (716) 546-7830